IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3993 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ASHVIN PURSHOTTAMBHAI CHAUHAN (MARVADI)

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3993 of 2004

MS KD PARMAR for Petitioner No. 1

RULE SERVED for Respondent No. 1-2

Mr.A.Y. Kogje, A.P.P. for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 24/06/2004

ORAL JUDGEMENT

1. By filing this petition, the petitioner-detenu

has challenged his detention order dated 13-11-2003, by which he is detained under P.A.S.A. as a " dangerous person". Along with the said detention order, the petitioner is served with the grounds of detention. In the grounds of detention there is a reference of three criminal cases registered against the petitioner under various Sections of I.P.C. , B.P. Act. etc.

2. The petitioner has challenged the aforesaid detention order on various grounds. It is submitted that by reading the complaint, it cannot be said that the petitioner has committed any breach of public order as according to the petitioner these are individual cases by which it can only be said that the petitioner is guilty of violation of law and order, but in any case, not public order. It is submitted that so far as criminal cases are concerned there is also a cross-complaint against the complainant of a particular complaint who is the complainant in one of the complaints which is filed against the present petitioner. Even in the detention order there is reference about such cross complaint. It has been pointed out by the learned Advocate for the petitioner that even though such cross complaint is referred by the detaining authority copy of such complaint has not been made available to the petitioner. Since this ground was not taken up initially, it has been taken up by way of amendment.

3. Mr. Kogje, learned A.G.P. has taken instructions on this factual aspect and he pointed out that even though reference is made in the detention order of such cross complaint, copy of the same is not made available to the petitioner. In my view the copy of the document, namely, the cross complaint on which the detaining authority has relied on should have been made available to the petitioner. Once the aforesaid aspect of filing of cross complaint has been referred to by the detaining authority, the same was required to be supplied to the petitioner so that the petitioner could have made more effective representation against the order of detention. The petition, therefore, is required to be allowed on this sole ground of non supply of vital document, namely, the cross complaint which has been referred to and relied on by the detaining authority while passing the detention order.

4. For the foregoing reasons, this petition is allowed. The order of detention dated 13-11-2003 passed by the respondent no.2 against the petitioner is ordered to be quashed and set aside. Detenu Ashwin Parshhottambhai Chauhan(Marvadi) is ordered to be set at

liberty forthwith, if no longer required in any other case. Rule is made absolute accordingly with no order as to costs. Direct service is permitted.

(P.B.Majmudar,J.)

stanley-pbm.